



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 10, 1998

Ms. Susan C. Rocha
Denton, McKamie & Navarro, P.C.
1700 Tower Life Building
310 South St. Mary's Street
San Antonio, Texas 78205-3111

OR98-1427

Dear Ms. Rocha

On behalf of the City of San Antonio (the "city"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 116065.

The city received a request for the "entire" personnel file and any other records maintained by the city concerning the requestor's application to the city's Fire Department Academy (the "academy"). In response to the request, you submitted to this office for review a representative sample of the records which you assert are responsive.¹ Apparently, certain information concerning the requestor's performance at the academy will be released to him. However, you assert that the remaining requested information is excepted from required public disclosure by section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the documents at issue.

Section 552.103(a) of the Government Code reads as follows:

(a) Information is excepted from [required public disclosure] if it is information:

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

....

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 588 (1991). A governmental body has the burden of providing relevant facts and documents to show the applicability of an exception in a particular situation. The test for establishing that section 552.103 applies is a two-prong showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision Nos. 452 (1986), 350 (1982).

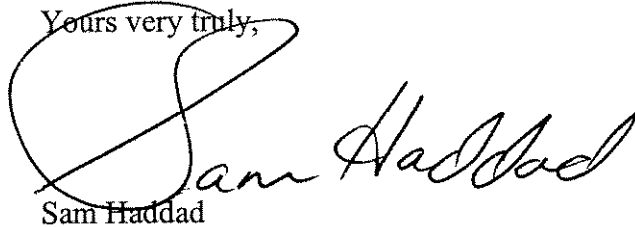
You have submitted a copy of "Plaintiffs' Original Petition" pending in District Court for Bexar County, wherein the city is a defendant and the requestor is a named plaintiff. *Andrade, et al. v. City of San Antonio*, No. 97CI-13212 (288th Dist. Ct., Bexar County, Tex., Aug. 18, 1997). This action seeks declaratory relief based on various grounds. The city has thus met its burden in establishing that litigation is pending. After reviewing the submitted materials, we further conclude that the requested information relates to the pending litigation. In this instance, you have made the requisite showing for purposes of section 552.103(a) that the requested information is related to pending litigation. Therefore, the requested records may be withheld under section 552.103(a).²

Generally, however, once information has been obtained by all parties to the litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a), and it must be disclosed. In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

²We note that the information requested also contains polygraph examination results. By statute, the city may, but is not required to, disclose these results to the requestor. V.T.C.S. art. 4413(29cc) § 19A; see Open Records Decision No. 481 (1987) at 9.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Sam Haddad". The signature is written in a cursive style with a large, looping initial "S".

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 116065

Enclosures: Submitted documents

cc: Mr. William R. Sawers
Rt. 5 Box 91
Floresville, Texas 78114
(w/o enclosures)